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Blas J. Coy, Jr., *Public Interest Counsel*

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

July 2, 2007

LaDonna Castañuela, Chief Clerk  
Texas Commission on Environmental Quality  
Office of the Chief Clerk (MC-105)  
P.O. Box 13087  
Austin, Texas 78711-3087

CHIEF CLERK'S OFFICE

2007 JUL -2 PM 1:36

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

RE: **BLUE RIDGE LANDFILL TX, LP**  
**TCEQ DOCKET NO. 2007-0614-MSW**

Dear Ms. Castañuela:

Enclosed for filing is the Public Interest Counsel's Response to Requests for Hearing and Requests for Reconsideration in the above-entitled matter.

Sincerely,

  
Mary Alice C. McKaughan, Attorney  
Public Interest Counsel

cc: Mailing List

Enclosure

REPLY TO: PUBLIC INTEREST COUNSEL, MC 103 • P.O. Box 13087 • AUSTIN, TEXAS 78711-3087 • 512-239-6363

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TCEQ DOCKET NO. 2007-0614-MSW

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IN THE MATTER OF THE  
APPLICATION OF BLUE RIDGE  
LANDFILL TEXAS, LP FOR AN  
AMENDMENT TO MUNICIPAL  
SOLID WASTE PERMIT NO. 1505A

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§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

CHIEF CLERKS OFFICE

**THE OFFICE OF PUBLIC INTEREST COUNSEL'S  
RESPONSE TO REQUESTS FOR HEARING  
AND  
REQUESTS FOR RECONSIDERATION**

TO THE HONORABLE MEMBERS OF THE TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY:

COMES NOW, the Office of Public Interest Counsel ("OPIC") of the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") and files this Response to Requests for a Contested Case Hearing and Requests for Reconsideration on Blue Ridge Landfill Texas, LP's ("Blue Ridge" or "Applicant") application to amend its municipal solid waste permit 1505A ("Permit"). OPIC recommends that the Commission grant the hearing requests of: (1) Arthur L. Crumpton, Jr.; (2) Anita Prinz; and, (3) Darryl Mayo collectively referred to herein as the, "One Mile Group." OPIC also recommends that the Commission grant the hearing requests of: (1) Mr. Rodrigo Carreon; (2) Richard Morrison on behalf of the Coalition Against Blue Ridge Landfill Expansion ("CABRLE"); and, (3) KTRK Television, Inc., Fox Television Stations, Inc., on behalf of its television station KRIV and KHOU-TV, L.P., collectively referred to herein as ("KTRK"), represented by Richard Lowerre. OPIC recommends that the Commission deny the four remaining hearing requests and all of the requests for reconsideration. In support of its recommendation, OPIC respectfully submits the following:

## I. INTRODUCTION

On January 25, 2006, Blue Ridge filed an application with the TCEQ to amend its municipal solid waste permit No, 1505A to authorize a vertical and horizontal expansion of their existing Type I municipal solid waste landfill facility. The current Blue Ridge landfill facility encompasses 598.6 acres and has a disposal area of 301.89 acres. The proposed Permit amendment will add a total of 746.28 acres of land to the current facility of which 482.35 acres will be used for waste disposal. The life term of the landfill will increase by approximately 25 years. The final elevation of waste fill and soil cover material will be 112 feet higher than the current elevation limit of 58 feet at an elevation of 170 feet or 235 feet above mean sea level. The expanded facility would be authorized to accept household solid waste, commercial solid waste, yard waste, Class 1 industrial non-hazardous waste, Class 2 industrial waste, Class 3 industrial waste, and special waste.

The facility is located approximately ½ mile south-southwest of the intersection of FM 2234 and FM 521, south of the city of Houston and north of the community of Fresno in Fort Bend County, Texas. The Blue Ridge landfill is within the extraterritorial jurisdiction (ETJ) of the City of Houston but is nearest to the City of Pearland. The predominant land uses within a mile of the proposed site is 61.6% undeveloped, 32% residential or future residential, and 4% industrial. The structures that are within a mile of the proposed facility are primarily homes. There are approximately 1,420 people that reside within a mile of the proposed facility. The nearest residence is approximately 470 feet south of the permit boundary and about 1,320 feet south of the waste cell.

The Executive Director ("ED") declared the application administratively complete on February 6, 2006. Because this application was filed before the implementation of the new TCEQ's Municipal Solid Waste Rules in Chapter 330 it falls under the TCEQ's Municipal Solid Waste Rules in Chapter 330 that were in effect prior to March 27, 2006. The TCEQ's Municipal Solid Waste Rules in Chapter 330 that were in effect prior to March 27, 2006 may be accessed by the public on the TCEQ web site at the following web address:

[http://www.tceq.state.tx.us/permitting/wastepermits/mswpermits/msw330rules\\_old.html](http://www.tceq.state.tx.us/permitting/wastepermits/mswpermits/msw330rules_old.html)

Applicant published a Notice of Receipt of Application and Intent to Obtain a Municipal Solid Waste Permit in: the *Fort Bend Herald-Coaster* on February 14, 2006; in the *Houston Chronicle* on February 15, 2006; and, in *Las Noticias de Fort Bend* on February 22, 2006. Notice of the first public meeting held in Houston on July 6, 2006 was published on June 13, 20, and 27, 2006, in the *Fort Bend Herald-Coaster*, and on June 13, 19, and 26, 2006, in the *Houston Chronicle*. A Notice of Application and Preliminary Decision for a Municipal Solid Waste Permit (NAPD) was published on November 13, 2006, in both the *Fort Bend Herald-Coaster* and in the *Houston Chronicle* and on November 15, 2006, in *Las Noticias de Fort Bend*. Notice of the second Public Meeting, held in Houston on December 7, 2006, was published on November 14, 21, and 28, 2006, in the *Houston Chronicle*. The public comment period closed on December 18, 2006. The Chief Clerk subsequently mailed the ED's Response to Public Comments on March 16, 2007.

The deadline to file a request for a contested case hearing and a request for reconsideration on this Application was Monday, April 16, 2007. The following (10) requesters filed timely requests for a contested case hearing with the TCEQ Chief Clerk on the indicated dates: (1)

Rodrigo Carreon, April 2, 2007; (2) Brian Childs, April 11, 2007; (3) Arthur L. Crumpton, April 2, 2007; (4) Ada Edwards, Houston City Council, December 7, 2006; (5) KTRK, April 13, 2007; (6) Darryl Mayo, December 6, 2006; (7) Anita Prinz, December 3, 2006; (8) Green Trees, July 28, 2006; (9) The Honorable Dora Olivio, April 14, 2007; and, (10) CABRLE, April 13, 2007.

The following four (4) requesters filed timely requests for reconsideration on the indicated dates:

(1) Chris Calvin, March 26, 2007; (2) Arthur L. Crumpton, April 2, 2007; (3) Sheba Muharbib, December 11, 2006; and, (4) Martin J. Rosetta, April 3, 2007. Based on the information submitted in the requests, and a review of the information available in the Chief Clerk's file, OPIC recommends denying all of the requests for reconsideration and granting six of the ten hearing requests.

## **II. REQUEST FOR RECONSIDERATION**

### **A. Applicable law**

Any person may file a request for reconsideration or a request for contested case hearing; or both, no later than 30 days after the TCEQ Chief Clerk's transmittal of the TCEQ Executive Director's ("ED") decision and response to comments. TEXAS WATER CODE ANN. §5.556; 30 TEX. ADMIN CODE ("TAC") §55.201(a) and (e). The request for reconsideration must state the reasons why the decision should be reconsidered. 30 TAC §55.201(e).

### **B. Requests for Reconsideration**

Four timely requests for reconsideration were filed. All four requests raise significant factual issues. Mr. Chris Calvin, PH.D., Co-Chair of the Committee for Responsible Development, filed a request for the reconsideration of the ED's decision on Blue Ridge's Application on the grounds that Applicant made false assertions regarding the 2005 reported

Barium leaks at the Blue Ridge Landfill facility. Mr. Calvin states that, based upon his conversations with the Environmental Protection Agency ("EPA"), the Applicant's claims that the Barium leaks are a naturally occurring event are false. Sheba Muharib requests that the ED's decision be reconsidered because the current landfill facility has an adverse effect on air quality and there are future plans to construct an elementary school within five miles of the proposed landfill expansion. Mr. Martin Rosetta seeks reconsideration of the ED's decision based upon many grounds including concerns about odor, land use, the accuracy of Applicant's traffic study, the availability of the applicable TCEQ rules and possible subsidence issues. Mr. Arthur Crampton, Jr. asks that the ED reconsider its Response To Comment No. 10 wherein the ED stated that the ED received no information that demonstrates that the proposed Permit amendment will present a threat to human health or the environment. Mr. Crampton alleges that this response to comment is incorrect because the ED has received scores of comments from individuals and groups that the expanded landfill will have adverse effects on the health and environment of the surrounding community.

OPIC agrees that these are all relevant issues that should be addressed. However, OPIC cannot support granting the above requests for reconsideration. An evidentiary record would be necessary for OPIC to make a recommendation to the Commission regarding whether the Permit amendment should be denied based on the above concerns. Accordingly, a contested case hearing to fully develop the disputed factual issues in this Permit application is a more appropriate remedy. Therefore, OPIC recommends that the commission deny the requests for reconsideration.

### III. REQUESTS FOR CONSTESTED CASE HEARING REQUIREMENTS OF APPLICABLE LAW

This application was declared administratively complete on February 6, 2006. As the application was declared administratively complete after September 1, 1999, a person may request a contested case hearing on the application pursuant to the requirements of Texas Water Code section 5.556 added by Acts 1999, 76<sup>th</sup> Leg., ch. 1350 (commonly known as "House Bill 801"). Under the applicable statutory and regulatory requirements, a hearing request must substantially comply with the following: give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request; identify the requestor's personal justiciable interest affected by the application showing why the requestor is an "affected person" who may be adversely affected by the proposed facility or activity in a manner not common to members of the general public; request a contested case hearing; list all relevant and material disputed issues of fact that were raised during the comment period that are the basis of the hearing request; and provide any other information specified in the public notice of application.<sup>1</sup>

Under 30 TAC Section 55.203(a), an affected person is "one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application." This justiciable interest does not include an interest common to the general public.<sup>2</sup> Relevant factors that will be considered in determining whether a person is affected include:

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<sup>1</sup> 30 TEX. ADMIN. CODE ("TAC") § 55.201(d).

<sup>2</sup> *Id.*

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
- (2) distance restrictions or other limitations imposed by law on the affected interest;
- (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (4) likely impact of the regulated activity on the health, safety, and use of property of the person;
- (5) likely impact of the regulated activity on use of the impacted natural resource by the person; and
- (6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.<sup>3</sup>

The Commission shall grant an affected person's timely filed hearing request if: (1) the request is made pursuant to a right to hearing authorized by law; and (2) the request raises disputed issues of fact that were raised during the comment period and that are relevant and material to the commission's decision on the application.<sup>4</sup>

Accordingly, responses to hearing requests must specifically address:

- (1) whether the requestor is an affected person;
- (2) which issues raised in the hearing request are disputed;
- (3) whether the dispute involves questions of fact or law;
- (4) whether the issues were raised during the public comment period;
- (5) whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comment;
- (6) whether the issues are relevant and material to the decision on the application; and
- (7) a maximum expected duration for the contested case hearing.<sup>5</sup>

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<sup>3</sup> 30 TAC § 55.203(c).

<sup>4</sup> 30 TAC § 55.211(c).

<sup>5</sup> 30 TAC § 55.209(e).

### **III. DISCUSSION**

#### **A. Determination of Affected Person**

##### **(1) Public Officials (Representative Dora Olivio and Council Member Ada Edwards)**

Two public officials filed timely requests for a contested case hearing on this Application:

- (1) The Honorable Dora Olivio, Texas State Representative, District 27, Fort Bend County; and,
- (2) Ada Edwards, Houston City Council Member District D. As a preliminary matter, OPIC notes that House Bill 801, passed during the 76th Legislative Session, changed the law governing hearing requests filed by State Legislators regarding a permit application affecting their district. Prior to the enactment of House Bill 801, a hearing request filed by a State Legislator on a permit application that impacted his, or her, district was automatically granted. After the passage of House Bill 801, a State Legislator's request for a public meeting on a permit application is automatically granted; however, for permit applications administratively complete after September 1, 1999, such as this one, the law no longer provides that a State Legislator's hearing request is automatically granted. Therefore, a State Legislator's hearing request must meet the same criteria that apply to other individuals' hearing requests.

The Honorable Representative Dora Olivio and City Council Member Ada Edwards do not provide sufficient information concerning the location of their place of residence, employment, worship and/or recreation relative to the location of the proposed facility site to establish a personal justiciable interest that is not common to the general public. Without this information, OPIC cannot determine if these Requesters are "affected persons." OPIC reserves the right to revise its opinion based upon any information provided in a timely filed Reply.

**(2) One Mile Group (Arthur Crumpton, Jr., Darryl Mayo and Anita Prinz)**

Arthur Crumpton, Jr., Darryl Mayo and Anita Prinz all identify themselves as residing in Shadow Creek within one mile of the Blue Ridge Landfill. Mr. Crumpton is concerned about the adverse effect the landfill expansion would have on his health and environment. Mr. Crumpton is also concerned that the expansion of the landfill facility is inconsistent with the current and future residential nature of the land use surrounding the landfill. Mr. Mayo is concerned that the landfill's expansion would adversely affect his, and his families', health, quality of life, and quiet enjoyment of their property. Mr. Mayo is also concerned that the expansion of the facility would have a negative impact on his property value and result in traffic congestion. Ms. Prinz raises the same concerns as Mr. Crumpton and Mr. Mayo in her hearing requests as well as the following issues and concerns:

1. Whether the landfill expansion will have an adverse impact on the surrounding air and water quality;
2. Whether the Applicant's characterization of the geology and hydrology of the area beneath and surrounding the landfill is adequate and accurate;
3. Whether Applicant has engaged in sufficient testing and monitoring to determine if the landfill has leaked and contaminated the underlying groundwater with Barium, hydrocarbons and BTEX;
4. Whether the expansion will be compatible with the regional solid waste management plan;
5. Whether the chosen operator of the facility has non-compliance issues that warrant denial of the permit;
6. Whether the draft permit's surface water controls are inadequate;
7. Whether the expanded facility would encroach upon the flood plain;
8. Whether the expanded facility complies with the TCEQ rules regarding mandatory site selection criteria because it is located in an area containing faults and wetlands;

9. Whether the evaluation of endangered species in the Application is adequate because the Application failed to adequately demonstrate that the expanded landfill operations would not adversely affect endangered or threatened species or the habitat of such species;
10. Whether the Applicant failed to submit a complete and accurate Application providing all the information required by the TCEQ rules;
11. Whether the Application fails to identify all springs, water wells, oil & gas wells, homes, churches and schools in the area of the landfill; and,
12. Whether the Application fails to identify site specific issues requiring special consideration, including problems with the existing landfill like a possible leakage of Barium.

The One Mile Group has claimed personal justiciable interests related to a legal right affected by this Application. The One Mile Group also raises many interests in their requests that are protected by the law under which the Application will be considered, including protection of their health, their environment, the enjoyment of their property.<sup>6</sup> The One Mile Group's immediate proximity to the proposed landfill expansion, combined with their collective interests regarding the landfill expansion's possible adverse affect on their health, environment and their use and enjoyment of their property, supports a finding that the members of the One Mile Group are "affected persons."<sup>7</sup> Therefore, OPIC recommends that the Commission find the three members of the One Mile Group to be "affected persons".

### **(3) Richard Morrison on behalf of CABRLE**

Mr. Richard Morrison filed a timely request for a contested case hearing on behalf of the association of CABRLE, which is an organization of individuals and local governments that live,

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<sup>6</sup> 30 TAC § 55.203(c)(4); 30 TAC Section 330.61

<sup>7</sup> 30 TAC § 55.203(c).

or own property, in the vicinity of the proposed landfill expansion. The stated purpose of CABRLE is to:

(1) promote the advancement of education through the pursuit and dissemination of information about problems related to pollution, environmental hazards and health risks and solutions related to solid waste facilities, water and air discharge systems, and land development within Fort Bend, Harris and Brazoria County, Texas, and (2) serve the scientific purposes of investigating and disseminating information about potential environmental hazards and their effects on human health and the well being of persons and other living entities.<sup>8</sup>

CABRLE claims the following four persons and entities as members: (1) Mr. Rodrigo Carreon, who owns property approximately 1.5 miles southwest of the Blue Ridge Landfill and has concerns about the landfill expansion's possible adverse impact on his well water, flooding in the area and his health and safety; (2) Ms. Sheila Burr who resides approximately ¾ of a mile north of the landfill and is concerned about the landfill expansion's impact on her health, traffic safety, land use and the visual impact the increased height of the landfill; (3) Sharon and Jason Husbands who reside approximately ¾ of a mile east of the landfill and have the same concerns about the landfill expansion as Ms. Burr; and, (4) the City of Pearland whose city limits are approximately .2 miles due east from the landfill and is concerned about the potential adverse health and safety issues related to increased traffic and the blowing trash, amongst other concerns.

CABRLE's request raises many relevant concerns and issues regarding the possible adverse effect that the Blue Ridge landfill expansion may have on the surrounding environment and community including:

1. The expanded landfill will create or maintain a nuisance condition;

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<sup>8</sup> CABRLE 4/13/07 Hearing Request.

2. The Blue Ridge Landfill expansion will result in odor problems, blowing trash, dust, traffic problems and excessive noise that will interfere with the surrounding residents' use and enjoyment of their property;
3. The expanded landfill will attract vectors including rats, mice, wild hogs, buzzards and seagulls;
4. The expanded landfill would not be compatible with the surrounding land use;
5. The Application's traffic analysis is deficient and flawed because it depends upon the use of FM 2234, Trammel Fresno Road and FM 3345 for access roads to the expanded Facility and Applicant has agreed with Missouri City<sup>9</sup> not to use these roads for truck traffic;
6. The proposed screening of the expanded landfill is insufficient due to the extreme proposed height of the landfill;
7. Whether the proposed expansion of the landfill will adversely impact the water supply of those Fresno community residents who rely upon the 80 water wells located within one mile of the landfill expansion for their drinking water;
8. Whether the current landfill operation is leaking Barium into the surrounding groundwater;
9. The current operator of the Blue Ridge Landfill has a history of noncompliance at this facility and other facilities;
10. The draft permit's surface water controls are inadequate and building the expansion will significantly alter natural drainage patterns at the site by significantly increasing the likelihood of flooding contrary to the requirements of TCEQ rules 330.55(b)(5)(D) and 330.56(4)(A)(iv);
11. The FEMA maps relied upon by Applicant do not adequately define the floodplain;
12. Applicant's proposed expansion to increase its landfill height to 172.1 feet violates the terms of its settlement agreement with Missouri City and Fort Bend County; and.

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<sup>9</sup> CABRLE Hearing Request Page 4.

13. The Application's proposed Site Operating Plan will be deficient because the Applicant's current Site Operating Plan is not sufficient to control odors and vectors.

Pursuant to 30 TAC Section 55.205, CABRLE may request a contested case hearing only if: (1) one or more members of CABRLE would have standing to request a hearing in their own right; (2) the interests CABRLE seeks to protect are germane to CABRLE's purpose; and (3) neither the claim asserted nor the relief requested by CABRLE requires the participation of the individual members of CABRLE in this case. CABRLE satisfies all the requirements of 30 TAC §55.205 concerning the determination of the "affected person" status of a group or association. The identified CABRLE members are affected parties and have standing to request a hearing in their own right. Because of the alleged proximity of Mr. Rodrigo Carreon's, Ms. Sheila Burr's and Sharon and Jason Husbands' ("Individual CABRLE Members") residences to the Landfill site, a reasonable relationship exists between the interests claimed by the Individual CABRLE Members and the activity regulated.<sup>2</sup> Moreover, since the proposed site of the Landfill is so close to their property, the proposed Landfill will likely impact their use of their property and their natural resources.<sup>3</sup> Further, the Individual CABRLE Members raise issues regarding their health and safety<sup>4</sup> and the compatibility of the proposed landfill expansion with surrounding land uses.<sup>5</sup> All of these interests are addressed by the Application and protected by the law under which the

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<sup>2</sup> 30 TAC §55.203(c)(3)

<sup>3</sup> 30 TAC §55.29(c)(3), (4) & (5).

<sup>4</sup> 30 TAC §330.5

<sup>5</sup> 30 TAC §330.53 (8)

Application will be considered.<sup>6</sup> Therefore each of the Individual CABRLE Members have a personal justiciable interest in the Application that is not common to the general public. All of these individuals are “affected persons” who would otherwise have standing to request a hearing in their own right.<sup>7</sup>

CABRLE’s stated interests are to, “(1) promote the advancement of education through the pursuit and dissemination of information about problems related to pollution, environmental hazards and health risks and solutions related to solid waste facilities, water and air discharge systems, and land development within Fort Bend, Harris and Brazoria County, Texas.” Through its hearing request, CABRLE raises issues that relate to discovering information through the hearing process regarding the, “pollution, environmental hazards and health risks and solutions related to solid waste facilities, water and air discharge systems, and land development within Fort Bend, Harris and Brazoria County, Texas.” These interests are germane to the organization’s purpose.<sup>1</sup> Moreover, neither the claims asserted by the CABRLE nor the relief requested, requires the participation of the individual members of CABRLE in this case.<sup>2</sup> Therefore, OPIC recommends that the Commission find that CABRLE is an affected party.

#### **(4) KTRK**

Mr. Richard Lowerre filed a timely request for a contested case hearing on behalf of the television station KTRK. KTRK owns approximately 160 acres adjacent to Blue Ridge Landfill.

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<sup>6</sup> 30 TAC Section 55.203(c)(1).

<sup>7</sup> 30 TAC §55.205(1)

<sup>1</sup> 30 TAC §55.205(2)

<sup>2</sup> 30 TAC §55.205(2) & (3)

KTRK and its affiliates own and operate three Doppler radar towers within three miles of the landfill. These three radar towers track storms and enable KTRK to give advance warning of adverse weather conditions. KTRK alleges that the construction of the Landfill expansion to a height of 170 feet would seriously interfere with KTRK's ability to use these towers to predict weather and track storms because the landfill will be higher than the towers and will block the radar signals. If Blue Ridge's application is granted and the landfill is expanded to a height of 170 feet KTRK would either have to expend a large amount of resources to relocate and re-build its Doppler radar towers or stop providing the public with accurate weather information. Since the public relies on KTRK to warn them of weather and storm conditions, the proposed expansion could create a risk to the public safety and welfare.

KTRK raises the following issues in its request:

1. Whether the construction of the landfill to the height of 170 feet would be incompatible with the surrounding land use because of its interference with KTRK's Doppler radar system;
2. Whether construction of the landfill will adversely impact public health and safety because of its interference with KTRK's Doppler radars;
3. Whether the landfill expansion will adversely impact the quality of surface and groundwater;
4. Whether the landfill expansion would adversely effect existing drainage patterns;
5. Whether the design criteria for the landfill expansion, the landfill liner and the surface water plan are adequate;
6. Whether the landfill expansion site does not meet the TCEQ rules criteria for a solid waste disposal site because it is in a flood plain, in an unstable area, in an area containing geological faults or in a wetland area;
7. Whether the Application should be denied or limited by special conditions because the Applicant has a history of noncompliance; and.

8. Whether granting the Application will result in perpetuating a nuisance condition.

OPIC recommends that the Commission find that KTRK is an affected person. As discussed above, KTRK owns land that borders the Blue Ridge Landfill site and operates a Doppler radar system within three miles of the site. The proximity of KTRK's property and radar system to the Blue Ridge Landfill site creates a reasonable relationship between KTRK's interests and the proposed activity, as well as establishing a likely impact of the regulated activity on KTRK's use of its property and natural resources.<sup>1</sup> KTRK's concerns relating to safety, health, water quality, the design criteria of the proposed landfill expansion and the landfill expansion's compatibility with the surrounding land use are all protected by the law under which the Application will be considered.<sup>10</sup> Therefore, OPIC recommends that the Commission find that KTRK is an "affected person" and grant its hearing request.

#### **(5) Rodrigo Carreon**

Mr. Rodrigo Carreon filed three timely requests for a contested case hearing on Blue Ridge's Application with the TCEQ. Mr. Carreon does not identify his proximity to the landfill in his requests; however, from his address and the information supplied by CABRLE, it may be assumed that Mr. Carreon resides approximately 1.5 miles from the landfill. Mr. Carreon's concerns include the possible adverse effect the landfill expansion may have on his health, the area surface and ground water quality and area drainage. Mr. Carreon is also concerned that contamination leaked from the expanded landfill will contaminate his well which he uses for

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<sup>1</sup> 30 TAC §55.29(c)(3), (4) & (5).

<sup>10</sup> 30 TAC §55.203(c)(1); See also 30 TAC §330.5

drinking water.<sup>11</sup> Mr. Carreon is further concerned that the landfill expansion will have an adverse effect on his air quality<sup>12</sup> and cause odor problems.<sup>13</sup>

OPIC recommends that the Commission find that Rodrigo Carreon is an affected person. As discussed above, Mr. Carreon resides near the Blue Ridge Landfill site and depends upon a well on his property for drinking water. The proximity of Mr. Carreon's property and well to the Blue Ridge Landfill site creates a reasonable relationship between Mr. Carreon's interests and the proposed activity, as well as establishing a likely impact of the regulated activity on Mr. Carreon's use of his property and natural resources.<sup>1</sup> Mr. Carreon's concerns relating to health and water quality are both protected by the law under which the Application will be considered.<sup>14</sup> Therefore, OPIC recommends that the Commission find that Mr. Carreon is an "affected person" and grant his hearing request.

#### **(6) Brian Childs**

Mr. Brian Childs filed a timely request for a contested case hearing on Blue Ridge's Application with the TCEQ. Mr. Brian Childs states in his request that he lives ten miles from the landfill. Mr. Childs also states that his wife had Hodgkin's' Lymphoma seven years ago. Mr. Childs is concerned that the landfill expansion would be detrimental to his families, and the surrounding residents', health because the expansion would release hazardous contaminants into the air near his home. Because of the large distance from Mr. Childs' residence to the Blue Ridge Landfill, OPIC cannot find a reasonable relationship between Mr. Childs' interests and the proposed activity. Because of the distance, there is also a less of a likelihood of an impact of the

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<sup>11</sup> Mr. Carreon's 12/10/06 Request.

<sup>12</sup> Id.

<sup>13</sup> Mr. Carreon's Hearing Request Filed with the TCEQ Chief Clerk on August 4, 2006.

<sup>14</sup> 30 TAC §55.203(c)(1); See also 30 TAC §330.5

regulated activity on Mr. Childs' use of his property and natural resources.<sup>1</sup> Pursuant to the above; OPIC recommends that the Commission find that Mr. Childs is not an affected person.

#### **(7) Green Trees**

Green Trees filed a timely request for a contested case hearing on Blue Ridge's Application with the TCEQ. Green Trees does not identify in its hearing request its proximity to the proposed landfill expansion. Green Trees is also not identified on Applicant's List of Adjacent Landowners that includes persons who own land within 500 feet of the site. Green Trees' concerns include the adverse affect the landfill expansion will have on the areas surface and ground water quality. Green Trees supplies no information in its request that creates either a reasonable relationship between its interests and the proposed activity or establishes a likely impact of the regulated activity on Green Trees use of its property and natural resources.<sup>1</sup> Without more specific information concerning Green Trees' location in relation to the Landfill site, OPIC cannot make a recommendation to the Commission concerning its affected person status. Pursuant to the above, unless this information is supplied in a timely filed reply, OPIC must recommend that the Commission find that Green Trees is not an affected person.

#### **B. Issues Raised in the Hearing Request**

The requests for contested case hearings raise the following issues:

1. Whether the landfill expansion will have an adverse impact on the surrounding air and water quality;

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<sup>1</sup>30 TAC §55.29(c)(3), (4) & (5).

<sup>1</sup>30 TAC §55.29(c)(3), (4) & (5).

2. Whether the information supplied by the Application concerning the geology and hydrology beneath, and surrounding, the proposed landfill expansion is adequate or accurate;
3. Whether Applicant has engaged in sufficient testing and monitoring to determine if the landfill has leaked and contaminated the sounding groundwater with Barium, hydro carbons and BTEX;
4. Whether the expansion will be compatible with the regional solid waste management plan;
5. Whether the chosen operator of the facility has non-compliance issues that warrant denial of the permit;
6. Whether the draft permit's surface water controls are inadequate;
7. Whether the expanded facility would encroach upon the flood plain;
8. Whether the expanded facility complies with the TCEQ rules regarding mandatory site selection criteria because it is located in an area containing faults and wetlands;
9. Whether the evaluation of endangered species in the Application is inadequate because the Application failed to adequately demonstrate that the expanded landfill operations would not adversely affect endangered or threatened species or the habitat of such species;
10. Whether the Applicant failed to submit a complete and accurate Application providing all the information required by the TCEQ rules;
11. Whether the Application fails to identify all springs, water wells, oil & gas wells, homes, churches and schools in the area of the landfill as required by the TCEQ rules;
12. Whether the Application fails to identify site specific issues requiring special consideration, including problems with the existing landfill like a possible leakage of Barium;
13. Whether the expanded landfill will create or maintain a nuisance condition;

14. Whether the Blue Ridge Landfill expansion will result in odor problems, blowing trash, dust, traffic problems and excessive noise that will interfere with the surrounding residents' use and enjoyment of their property;
15. Whether the expanded landfill will attract vectors including rats, mice, wild hogs, buzzards and seagulls;
16. Whether the expanded landfill will be compatible with the surrounding land uses;
17. Whether the Application's traffic analysis is deficient and flawed because it depends upon the use of FM 2234, Trammel Fresno Road and FM 3345 for access roads to the expanded Facility and Applicant has agreed with Missouri City<sup>15</sup> not to use these roads for truck traffic;
18. Whether the proposed screening of the expanded landfill is insufficient due to the extreme proposed height of the landfill;
19. Whether the proposed expansion of the landfill will adversely impact the water supply of the Fresno Community residents who obtain their drinking water from one of the 80 water wells located within one mile of the proposed landfill expansion;
20. Whether the current landfill is leaking Barium into the surrounding groundwater;
21. Whether the draft permit's surface water controls are adequate;
22. Whether building the expansion will significantly alter natural drainage patterns at the site thereby significantly increasing the likelihood of flooding contrary to the requirements of TCEQ rules 330.55(b)(5)(D) and 330.56(4)(A)(iv);
23. Whether the FEMA maps relied upon by Applicant to define the floodplain in the area of the proposed landfill expansion adequately define the floodplain;

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<sup>15</sup> CABRLE Hearing Request Page 4.

24. Whether Applicant's proposed expansion to increase its landfill height to 172.1 feet violates the terms of its settlement agreement with Missouri City and Fort Bend County;
25. Whether the Application's proposed Site Operating Plan will be deficient because the Applicant's current Site Operating Plan is not currently sufficient to control odors and vectors;
26. Whether the construction of the landfill to the height of 170 feet would be incompatible with the surrounding land use because of its interference with KTRK's Doppler radar system;
27. Whether construction of the landfill will adversely impact public health and safety because of its interference with KTRK's Doppler radars;
28. Whether the landfill expansion will adversely impact the quality of surface and groundwater;
29. Whether the landfill expansion would adversely affect existing drainage patterns;
30. Whether the design criteria for the landfill expansion and the landfill are adequate;
31. Whether the landfill expansion site is inadequate because it is in a flood plain, in an unstable area, in an area containing geological faults or in a wetland area;
32. Whether the Application should be denied or limited by special conditions because the Applicant or the landfill's operator has a history of noncompliance;
33. Whether granting the Application will result in perpetuating a nuisance condition;
34. Whether granting the Application will have an adverse effect on the surrounding property values; and,
35. Whether construction of the landfill expansion will adversely affect the health and safety of those residing in the area surrounding the proposed landfill expansion.

### **1. Issues Disputed**

There is no agreement of the parties on the issues discussed above. In the Executive Director's Response to Comments, the ED, based on the information submitted by Applicant to the ED, determined that a landfill in this location is compatible with surrounding land use, that it meets the required regulations and has issued a draft permit. No changes were made to the draft permit after the Executive Director's Response to Comments. As evidenced by the Requesters hearing requests, the Requesters dispute the position of the Executive Director on the issues listed above. Therefore, the issues set forth above are disputed.<sup>1</sup>

### **2. Issues of Fact**

Issue No. 24, "Whether Applicant's proposed expansion to increase its landfill height to 172.1 feet violates the terms of its settlement agreement with Missouri City and Fort Bend County" raised by the CABRLE is a mixed issue of law and fact and is not relevant to the Application before the Commission. The remaining issues listed immediately above are issues of fact, rather than issues of law or policy, they are appropriate for referral to hearing.<sup>2</sup>

### **3. Issues Raised During the Comment Period.**

All of the above issues were raised during the comment period and not withdrawn prior to the filing of the ED's Response to Comments.<sup>3</sup>

### **4. Relevant and Material Issues**

All of the issues listed immediately above, with the exception of issues NO. 24 and No. 34, are relevant and material to the Commission's decision on this Application.<sup>4</sup> These issues are

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<sup>1</sup> See 30 TAC Section 50.115(c)(1); 30 TAC Section(s) 55.201(d)(4), 55.209(e)(2), and 55.211(c)(2)(A).

<sup>3</sup> 30 TAC Section(s) 55.201(c) & (d)(4), 55.211(c)(2)(A)

relevant and material because they concern community growth trends,<sup>5</sup> land use,<sup>6</sup> health and safety,<sup>7</sup> transportation,<sup>8</sup> area geology,<sup>9</sup> protection of endangered species,<sup>10</sup> and the competency of the Applicant and its employees to run the site.<sup>12</sup> All of these interests are addressed by the Permit application and protected by the law under which the Application will be considered. Issues such as design and safety factors, leaks from landfill, groundwater monitoring, groundwater contamination, noise and odor pollution, flooding, storm water, corrective action requirements, air quality, handling of waste, easements and buffer zones, adequacy of the Application and the draft permit may also be addressed in a proceeding on this Application and, therefore, are relevant and material. Issue No. 24 is inappropriate for referral to hearing because it requires the construction of a contract between two parties and therefore is not under the TCEQ's jurisdiction. Issue No. 34 is inappropriate for referral because the TCEQ has no authority under the Texas Solid Waste Disposal Act (TSWDA) to consider property values when reviewing permit applications; therefore, this issue is not relevant or material.

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<sup>4</sup>30 TAC Section(s) 55.201(d)(4) and 55.211(c)(2)(A)

<sup>5</sup>30 TAC §330.53 (8)(C)

<sup>6</sup>30 TAC §330.53 (8)

<sup>7</sup> 30 TAC §330.5

<sup>8</sup>30 TAC §330.53 (9)

<sup>9</sup>30 TAC §330.53 (10)

<sup>10</sup>30 TAC §330.53 (13)

<sup>12</sup>30 TAC §330.52 (9) & (10)

## **5. Issues recommended for Referral to Hearing:**

OPIC recommends that the following issues be referred to SOAH for a contested case

hearing:

1. Whether the proposed landfill expansion is compatible with surrounding land use;
2. Whether the proposed landfill expansion is compatible with the projected growth and development of the community of Fresno and the City of Pearland;
3. Whether the proposed landfill site is inadequate because it is in a flood plain, in an unstable area, in an area containing geological faults or in a wetland area;
4. Whether the proposed landfill is compatible with the Regional Solid Waste Plan;
5. Whether the applicant submitted a complete and accurate application;
6. Whether the Application should be denied or limited by special conditions because the Applicant or Applicant's operator has a history of noncompliance at other landfill facilities;
7. Whether the information supplied by the Applicant in the Application regarding the proposed site's geology and hydrology is adequate;
8. Whether the proposed design criteria for the landfill liner in the proposed expansion area is adequate;
9. Whether the proposed buffer and screening for the proposed landfill expansion will be sufficient to protect surrounding land use;
10. Whether Applicant's proposed Site Operating Plan is adequate to prevent blown trash and odors;
11. Whether an adequate inspection of the landfill site for threatened or endangered species or habitat was performed;
12. Whether the Application supplies the required transportation information;
13. Whether construction of the landfill will result in a traffic hazard;
14. Whether the landfill expansion will adversely affect surrounding air quality;
15. Whether the proposed landfill expansion will adversely affect surface water quality;

16. Whether construction of the landfill expansion will adversely affect the health and safety of the residents in the surrounding community;
17. Whether Applicant has engaged in sufficient testing and monitoring to determine if the landfill has leaked and contaminated the sounding groundwater with Barium, hydro carbons and BTEX;
18. Whether the draft permit's surface water controls are inadequate;
19. Whether the expanded facility would encroach upon the flood plain;
20. Whether the Application fails to identify all springs, water wells, oil & gas wells, homes, churches and schools in the area of the landfill as required by the TCEQ rules;
21. Whether the Blue Ridge Landfill expansion will result in odor problems, blowing trash, dust, traffic problems and excessive noise that will interfere with the surrounding residents' use and enjoyment of their property;
22. Whether the expanded landfill will attract vectors including rats, mice, wild hogs, buzzards and seagulls;
23. Whether the Application's traffic analysis is deficient and flawed because it depends upon the use of FM 2234, Trammel Fresno Road and FM 3345 for access roads to the expanded Facility and Applicant has agreed with Missouri City<sup>16</sup> not to use these roads for truck traffic;
24. Whether the proposed screening of the expanded landfill is insufficient due to the extreme proposed height of the landfill;
25. Whether the proposed expansion of the landfill will adversely impact the water supply of the Fresno Community residents who obtain their drinking water from one of the 80 water wells located within one mile of the proposed landfill expansion;
26. Whether building the expansion will significantly alter natural drainage patterns at the site thereby significantly increasing the likelihood of flooding contrary to the requirements of TCEQ rules 330.55(b)(5)(D) and 330.56(4)(A)(iv);

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<sup>16</sup> CABRLE Hearing Request Page 4.

27. Whether the FEMA maps relied upon by Applicant to define the floodplain in the area of the proposed landfill expansion adequately define the floodplain;
28. Whether the construction of the landfill to the height of 170 feet would be incompatible with the surrounding land use because of its interference with KTRK's Doppler radar system;
29. Whether construction of the landfill will adversely impact public health and safety because of its interference with KTRK's Doppler radars; and,
30. Whether construction of the landfill expansion will adversely affect the health and safety of those residing in the area surrounding the proposed landfill expansion.

**C. Recommended Expected Duration of Hearing**

Section 55.115(d) of the TCEQ's rules requires the Commission to specify the maximum expected duration of the hearing in its order when referring a matter to the State Office of Administrative Hearings. The rules specify that the Commission must state the duration of the hearing from the preliminary hearing to the Administrative Law Judge's issuance of the Proposal for Decision ("PFD"). Due to the complex nature of the issues involved and the anticipated voluminous discovery in this case, OPIC estimates that the maximum expected duration of a hearing on this matter would be approximately twelve (12) months from the date of the preliminary hearing until the issuance of the PFD.

**IV. CONCLUSION**

OPIC respectfully recommends that the Commission grant the Requests for Contested Case Hearing made by: (1) Arthur L. Crumpton, Jr.; (2) Anita Prinz; (3) Darryl Mayo; (4) CABRLE; (5) KTRK; and, (6) Mr. Carreon and refer this case to SOAH for a contested case hearing on the issues enumerated above. OPIC recommends that the Commission deny the requests for contested case hearing made by Representative Dora Olivio, Council Member Ada Edwards, Mr. Brian Childs and Green Trees as well as all of the requests for reconsideration.

Respectfully submitted,

Blas J. Coy, Jr.  
Public Interest Counsel

By 

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#### **CERTIFICATE OF SERVICE**

I hereby certify that on this 2nd day of July, 2007, the original and eleven true and correct copies of the Office of Public Interest Counsel's Response to Hearing Requests and Requests For Reconsideration was served upon the Chief Clerk of the TCEQ and a true and correct copy on all persons listed on the attached Mailing List via hand delivery, facsimile transmission, Inter-Agency Mail or by deposit in the U.S. Mail.

  
Mary Alice C. Boehm-McKaughan



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